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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,220	12/11/2000	Marc W. Kauffman	D02487	5436

			EXAMINER
43471	7590	05/12/2006	DUONG, THOMAS

GENERAL INSTRUMENT CORPORATION DBA THE CONNECTED
HOME SOLUTIONS BUSINESS OF MOTOROLA, INC.
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HORSHAM, PA 19044

ART UNIT	PAPER NUMBER
2145	

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/734,220	KAUFFMAN ET AL.
	Examiner	Art Unit	
	Thomas Duong	2145	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>24 April 2006</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____months from the mailing date of the final rejection.

   b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.

     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: *None*.

   Claim(s) objected to: *None*.

   Claim(s) rejected: *1-30*.

   Claim(s) withdrawn from consideration: *None*.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to·provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:

   <u>Please see attachment sheet.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.
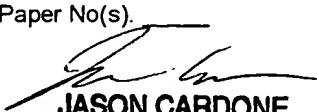
JASON CARDONE
SUPERVISORY PATENT EXAMINER

DETAILED ACTION

Response to Argument

1.   The Applicants' arguments and amendments filed on April 24, 2006 have been fully

considered, but they are not persuasive.

2.   With regard to <u>claims 1 and 21</u>, the Applicants point out that,

  • *Capek does not disclose or suggest inserting an alternative media file into a*

    streaming multimedia file using a first and second cache, a control unit, and a

    switching mechanism, wherein the alternative media file is inserted in the stream

    independent of boundaries of the multimedia file, as substantially recited by

    amended claims 1 and 21.

However, the Examiner finds that the Applicants' arguments are not persuasive

because Capek discloses:

  • *a first cache (insertion repository 22) for storing a received alternative media file;*

    (Capek, col.7, lines 17-25, lines 39-47; module 22, fig.2)

    Capek discloses, *"in accordance with another aspect of the present invention, the*

    insertion may include control logic that imparts control over the insertion to the

    user. This may include providing control logic that replaces the insertion with the

    requested program material after the program material is retrieved. Alternatively,

    the control logic may provide the insertion for a predetermined period of time. In

    this case, the period of time that that insertion is presented may de dependent

    upon how much time it takes to retrieve the requested program material. The

insertion may include data of a variety of formats, such as audio data, graphical images, video images, text, or any combination thereof" (Capek, col.5, lines 17-28). Hence, Capek teaches of an insertion repository that stores data (multimedia, advertisements, announcements, etc.) to be inserted in the data stream delivered to the requested client.

- *a second cache (server 26) for storing a streaming multimedia file;* (Capek, col.7, lines 17-25; module 26, fig.2)

  Capek teaches of a server that stores data (multimedia, program material, etc.) to be delivered to the requested client.

- *a control unit (insertion manager 20) for receiving as a first input a control signal from said first cache and generating as an output a switching control signal indicative of the presence or absence of a complete alternative media file being stored in said first cache; and* (Capek, col.7, lines 17-25, lines 39-47; module 20, fig.2)

  Capek teaches of an insertion manager that inserts data (multimedia, advertisements, announcements, etc.) to be delivered to the requested client.

- *a switching mechanism, coupled to each one of said control unit, said first cache, said second cache and said streaming multimedia file for providing as an output, directed to the at least one end-user, a stream selected from one of said first cache, said streaming multimedia file and said second cache, as controlled by said switching output signal from said control unit so as to insert the alternative media file in the stream* (Capek, col.5, lines 20-22; col.7, lines 49-52; col.9, lines 6-24; col.10, lines 18-28)

Capek includes a control mechanism that *"will provide for the replacement of the insertion by the requested program material once the program material is received from the distribution server"* (Capek, col.9, lines 11-13). In other words, Capek's control mechanism will replace the insertion data, which may be *"text, graphics, animation, motion video, sound, etc"* as well as *"the combination of data having different formats into a single insertion for providing a multimedia experience"* (Capek, col.7, lines 49-52), with the requested material once it is available. According to Capek, the control logic's function is to *"replaces the insertion with the requested program material after the program is retrieved"* (Capek, col.5, lines 20-22). Also, the *"insertion manager may then make a determination of how long to provide the insertion to the user before beginning to forward the buffered data to the client in order that the last byte of data is delivered at approximately the same time as it would have been if the data had been downloaded directly to the client"* (Capek, col.10, lines 18-27).

- *wherein the alternative media file is inserted in the stream independent of boundaries of the multimedia file.* (Capek, col.5, lines 20-22, lines 41-52; col.7, lines 49-52; col.9, lines 6-24; col.10, lines 18-28; col.10, lines 1-67)

Capek includes a control mechanism that *"will provide for the replacement of the insertion by the requested program material once the program material is received from the distribution server"* (Capek, col.9, lines 11-13). In other words, Capek's control mechanism will replace the insertion data, which may be *"text, graphics, animation, motion video, sound, etc"* as well as *"the combination of data having different formats into a single insertion for providing a multimedia experience"* (Capek, col.7, lines 49-52), with the requested material once it is

available. According to Capek, the control logic's function is to *"replaces the insertion with the requested program material after the program is retrieved"* (Capek, col.5, lines 20-22). Also, the *"insertion manager may then make a determination of how long to provide the insertion to the user before beginning to forward the buffered data to the client in order that the last byte of data is delivered at approximately the same time as it would have been if the data had been downloaded directly to the client"* (Capek, col.10, lines 18-27). In addition, Capek teaches *"wherein an insertion is selectively transmitted to the first application if the amount of time required to retrieve the requested information is sufficient to transmit the insertion to the first application. The transmission of the retrieved application may, on the other hand, be preceded by waiting a preselected period of time. The preselected period of time may be based upon the insertion transmitted to the first application. The preselected period of time may alternatively be based upon the amount of time required to retrieve the information from the second computer"* (Capek, col.5, lines 41-52). Hence, Capek teaches of inserting the alternate media file into the multimedia stream regardless of the stream since the insertion, as *"a complete insertion or elements of an insertion that can be used to generate a complete insertion dynamically"* (Capek, col.5, lines 14-16) can be done while waiting for the retrieval of requested stream (i.e., during a network delay in the middle of transmitting the multimedia perhaps), before the transmission of the multimedia altogether, etc.

3.   With regard to <u>claim 22</u>, the Applicants point out that,

- *Furthermore, the final Office action has not addressed the fact that Capek also does not disclose using a control signal output from the cache which indicates that a complete alternative file is stored and is ready for transmission to the predetermined at least one end-user, or will be ready in time to transmit, as recited by claim 2, amended to be in independent form.*

However, the Examiner finds that the Applicants' arguments are not persuasive because Capek discloses:

- *a first cache (insertion repository 22) for storing a received alternative media file;* (Capek, col.7, lines 17-25, lines 39-47; module 22, fig.2)

  Capek discloses, *"in accordance with another aspect of the present invention, the insertion may include control logic that imparts control over the insertion to the user. This may include providing control logic that replaces the insertion with the requested program material after the program material is retrieved. Alternatively, the control logic may provide the insertion for a predetermined period of time. In this case, the period of time that that insertion is presented may de dependent upon how much time it takes to retrieve the requested program material. The insertion may include data of a variety of formats, such as audio data, graphical images, video images, text, or any combination thereof"* (Capek, col.5, lines 17-28). Hence, Capek teaches of an insertion repository that stores data (multimedia, advertisements, announcements, etc.) to be inserted in the data stream delivered to the requested client.

- *a second cache (server 26) for storing a streaming multimedia file;* (Capek, col.7, lines 17-25; module 26, fig.2)

Capek teaches of a server that stores data (multimedia, program material, etc.)

to be delivered to the requested client.

- *a control unit (insertion manager 20) for receiving as a first input a control signal*

  from said first cache and generating as an output a switching control signal

  indicative of the presence or absence of a complete alternative media file being

  stored in said first cache; and (Capek, col.7, lines 17-25, lines 39-47; module 20,

  fig.2)

Capek teaches of an insertion manager that inserts data (multimedia,

advertisements, announcements, etc.) to be delivered to the requested client.

- *a switching mechanism, coupled to each one of said control unit, said first cache,*

  said second cache and said streaming multimedia file for providing as an output,

  directed to the at least one end-user, a stream selected from one of said first

  cache, said streaming multimedia file and said second cache, as controlled by

  said switching output signal from said control unit so as to insert the alternative

  media file at a predetermined location in the stream, including either one of the

  beginning and the end of the streaming multimedia file, (Capek, col.5, lines 20-

  22, lines 41-52; col.7, lines 49-52; col.9, lines 6-24; col.10, lines 18-28; col.10,

  lines 1-67)

Capek includes a control mechanism that *"will provide for the replacement of the*

insertion by the requested program material once the program material is

received from the distribution server" (Capek, col.9, lines 11-13). In other words,

Capek's control mechanism will replace the insertion data, which may be *"text,*

graphics, animation, motion video, sound, etc" as well as *"the combination of*

data having different formats into a single insertion for providing a multimedia

experience" (Capek, col.7, lines 49-52), with the requested material once it is

available. According to Capek, the control logic's function is to *"replaces the*

insertion with the requested program material after the program is retrieved"

(Capek, col.5, lines 20-22). Also, the *"insertion manager may then make a*

determination of how long to provide the insertion to the user before beginning to

forward the buffered data to the client in order that the last byte of data is

delivered at approximately the same time as it would have been if the data had

been downloaded directly to the client" (Capek, col.10, lines 18-27). In addition,

Capek teaches *"wherein an insertion is selectively transmitted to the first*

application if the amount of time required to retrieve the requested information is

sufficient to transmit the insertion to the first application. The transmission of the

retrieved application may, on the other hand, be preceded by waiting a

preselected period of time. The preselected period of time may be based upon

the insertion transmitted to the first application. The preselected period of time

may alternatively be based upon the amount of time required to retrieve the

information from the second computer" (Capek, col.5, lines 41-52). Hence,

Capek teaches of inserting the alternate media file into the multimedia stream

regardless of the stream since the insertion, as *"a complete insertion or elements*

of an insertion that can be used to generate a complete insertion dynamically"

(Capek, col.5, lines 14-16) can be done while waiting for the retrieval of

requested stream (i.e. during a network delay in the middle of transmitting the

multimedia perhaps), before the transmission of the multimedia altogether, etc.

- *wherein the control signal output from the first cache indicates that a complete*

  alternative file is stored and is ready for transmission to the predetermined at

least one end-user, or will be ready in time to transmit. (Capek, col.5, lines 20-22,

lines 41-52; col.7, lines 49-52; col.9, lines 6-24; col.10, lines 18-28; col.10, lines

1-67)

Capek includes a control mechanism that *"will provide for the replacement of the*

insertion by the requested program material once the program material is

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Capek teaches *"wherein an insertion is selectively transmitted to the first*

application if the amount of time required to retrieve the requested information is

sufficient to transmit the insertion to the first application. The transmission of the

retrieved application may, on the other hand, be preceded by waiting a

preselected period of time. The preselected period of time may be based upon

the insertion transmitted to the first application. The preselected period of time

may alternatively be based upon the amount of time required to retrieve the

information from the second computer" (Capek, col.5, lines 41-52). Hence,

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requested stream (i.e. during a network delay in the middle of transmitting the

multimedia perhaps), before the transmission of the multimedia altogether, etc.